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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JIN ACKERMAN,

Plaintiff,

v.

GITTERE, *et al.*,

Defendants.

Case No.: 3:20-cv-00337-MMD-CSD

ORDER

Re: ECF No. 30

Before the court is Plaintiff's Motion for Appointment of Counsel (ECF No. 30). Plaintiff bases his motion on the fact that (1) he is unable to afford counsel and is proceeding *in forma pauperis*, (2) Plaintiff is a "segregated inmate, and has limited access to the facility's law library," (3) the discovery "needed to prove plaintiff's claims are confidential," and (4) the substantive issues and procedural matters in the case are too complex for Plaintiff's comprehension and abilities. (*Id.* at 1, 3.)

While any *pro se* inmate such as Mr. Ackerman would likely benefit from services of counsel, that is not the standard this court must employ in determining whether counsel should be appointed. *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

A litigant in a civil rights action does not have a Sixth Amendment right to appointed counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme Court has generally stated that although Congress provided relief for violation of one's civil rights under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to

1 federal court and not a right to discover such claims or even to litigate them effectively once filed
2 with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

3 In very limited circumstances, federal courts are empowered to request an attorney to
4 represent an indigent civil litigant. The circumstances in which a court will grant such a request,
5 however, are exceedingly rare, and the court will grant the request under only extraordinary
6 circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986);
7 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

8 A finding of such exceptional or extraordinary circumstances requires that the court
9 evaluate both the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to
10 articulate his claims in light of the complexity of the legal issues involved. Neither factor is
11 controlling; both must be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015,
12 1017 (9th Cir. 1991), *citing Wilborn, supra*, 789 F.2d at 1331. Thus far, Plaintiff has shown an
13 ability to articulate his claims.

14 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

15 If all that was required to establish successfully the
16 complexity of the relevant issues was a demonstration of
17 the need for development of further facts, practically all
18 cases would involve complex legal issues. Thus,
19 although *Wilborn* may have found it difficult to
20 articulate his claims *pro se*, he has neither demonstrated
21 a likelihood of success on the merits nor shown that the
22 complexity of the issues involved was sufficient to
23 require designation of counsel.

20 The Ninth Circuit, therefore, affirmed the District Court's exercise of discretion in denying
21 the request for appointment of counsel because the Plaintiff failed to establish the case was
22 complex as to facts or law. 789 F.2d at 1331.

1 The substantive claims involved in this action are not unduly complex. Plaintiff's Amended
2 Complaint was allowed to proceed on Claim I for violation of his due process rights against
3 Defendants Moskoff, Homan, Gittere, Reubart, Cooke (Sandoval), and Dzurenda, Claim II for
4 failure to protect against Defendants Gittere and Dzurenda, and Claim III for violation of the Equal
5 Protection Clause against Defendants Reubart, Gittere, and Charles Daniels. (ECF No. 21 at 3.)
6 These claims are not so complex that counsel needs to be appointed to prosecute them.

7 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of
8 the likelihood of success on the merits of his claims. Plaintiff has not provided any evidence, nor
9 has he made any argument in his motion for appointment of counsel, showing that he is likely to
10 prevail on the merits of his claims.

11 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion for Appointment of
12 Counsel (ECF No. 30).

13 **IT IS SO ORDERED.**

14 Dated: June 9, 2022.



CRAIG S. DENNEY
UNITED STATES MAGISTRATE JUDGE